

No. 11962.
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

PROCTER & GAMBLE MANUFACTURING CO.,

Appellant,

vs.

H. F. METCALF, Trustee in Bankruptcy of the Estate of
F. P. Newport Corporation, Ltd., Bankrupt, DOROTHY
DAY, MARTHA McMILLEN, MATILDA OLSEN, WILLIAM
H. NEBLETT, MRS. F. P. NEWPORT, EUGENE P. CLARK,
E. P. NEWPORT CORPORATION, LTD., RUBY E. NEBLETT,
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES and
JOSEPH SATTTLER,

Appellees.

MEMORANDUM ON APPEAL BY JOSEPH
SATTTLER, APPELLEE.

FILED

OCT 7 - 1948

PAUL P. O'BRIEN, -
CLERK

JOSEPH SATTTLER,
458 South Spring Street, Los Angeles 13,
In propria persona

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Appellees.

MEMORANDUM ON APPEAL BY JOSEPH SATTTLER, APPELLEE.

Now comes Joseph Sattler and files this Memorandum relative to the pending appeal by the Proctor & Gamble Manufacturing Co. from the order of confirmation of sale of the real estate in the above entitled matter, and your appellee respectfully desires to call the Court's attention to the following matters:

I.

That the above entitled bankruptcy matter is the result of an involuntary petition in bankruptcy filed on March

19, 1935; that the adjudication in bankruptcy was entered by the Court on January 12, 1937. That the primary cause for the bankruptcy proceedings was to prevent the Security-First National Bank from selling the property, a portion of which is involved in this sale, to satisfy the obligations of the Bankrupt to the Bank. That an orderly administration of this estate has not, in the opinion of the appellee, been had, the Bankrupt apparently frustrating every progressive step attempted by the Trustee on behalf of the creditors.

II.

That the claims of general unsecured creditors in this estate, as filed herein, approximate less than \$100,000.00 in amount. That the records of the Referee's court demonstrate that fees allowed therein, some of which have not been paid, approximate the sum of \$130,000.00. This, in the opinion of your appellee, is due to the prolonged administration of this estate.

III.

That for many years the Trustee and the creditors have endeavored to procure a buyer for the property involved in this appeal, and particularly during the last six years. That finally a firm offer for the purchase of the said property was procured by your appellee from Proctor & Gamble at the price of \$198,000.00, which is, all things considered, a very fair offer under the circumstances. It must be borne in mind that so long as the obligation of the Security-First National Bank is unpaid, the interest on the principal must be provided for and the taxes on the property must be paid, and the longer the sale is delayed the less probability is there of any dividends being

paid to unsecured creditors. In the present proceeding there was absolutely no showing made but that all the requirements of the Bankruptcy Act for the return of sale, the hearing on which was full and fair, was not made and had, and there was no showing whatsoever that the offer made was not the best offer that could be received, and that such offer was probably a better one than any that will hereafter be procured. There was no legal showing of any kind or character in the Record on Review justifying the Court to reverse the order of confirmation of the sale, in the opinion of your appellee. Neither the vague promises of a better offer, nor the actual production of a higher bid, justifies the Court's vacating the confirmation of the sale. In this connection permit us to call the Court's attention to the case of

In re Stanley Engineering Co., 164 F. 2d, p. 316

which held that:

"The Circuit Court of Appeals for the Third Circuit sitting *en banc*, has ruled upon the question whether a court should upset a judicial sale at auction upon the ground that a new bidder has appeared who offers more than the knock-down price.

The opinion by Circuit Judge Kalodner reviews the authorities on the question and holds that it was an abuse of discretion for the bankruptcy court to fail to confirm a judicial sale, where the only apparent reason for the court's action was its desire to obtain the benefit of a higher bid made at the confirmation hearing."

We particularly desire to call the Court's attention to the authorization of Joseph Sattler to act as broker in this matter and the justification of the order allowing

him a commission as broker for procuring the Procter and Gamble Manufacturing Co. as the highest bidder and purchaser of the property herein involved.

Some opposition has been made by Mr. Newport, an officer of the bankrupt, who himself is a real estate broker and we understand has been paid heretofore, directly or indirectly, commissions for sale of the bankrupt's property herein. The position seemed to be based upon the alleged fact that no authorization by written order of Court was given to Mr. Sattler to act as broker. In this very same estate on many occasions and on prior sales real estate commissions have been paid by the Trustee and the Court to brokers upon procuring bidders for property of the estate and in practically no instance was there any prior written authorization, but the sales were handled in the same manner and the buyers were procured in the same manner as was done in this instance.

If Mr. Newport's position is that Mr. Sattler should have had written authorization from the Trustee, then in turn of course the Trustee would have had to have had the authorization by the Referee. In this case the Referee directly authorized Mr. Sattler to act as the broker and told him that his compensation would not exceed \$5000. [Tr. of Record, Vol. II, p. 29.]

In addition on December 1, 1947, as appears in page 291 of Vol. II of the Transcript of Record, statement by Mr. Metcalf:

“I would like to comment on the fact that these commissions are being paid. The only possible way I consider that they can sell property in Las Crescenta and Verdugo Woodland is to employ brokers and, I can do better work through a broker than I can direct.”

At this point Mr. Lynch, attorney for the Trustee, read into the record from Mr. Sattler's card which reads as follows:

"Joseph Sattler, 218 H. W. Hellman Building, Los Angeles, Calif. Permit #11732 License No."

As to whether or not Mr. Sattler procured Procter & Gamble Manufacturing Co. there can be but little doubt, and we again refer the Court to page 290 of Vol. II of the Transcript of Record, wherein the attorney for the Trustee, Mr. Lynch, asked:

"Do I understand this gentleman (Joseph Sattler) produced this person here?"

Referee: He contacted the Procter and Gamble Manufacturing Co.

Procter & Gamble representative: He was the finder and we have handled the negotiations from that point."

In addition to the foregoing, we respectfully call the Court's attention to the voluminous correspondence between Mr. Sattler and the Procter & Gamble people as shown by Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P and Q, appearing in Transcript of Record, pages 68 to 85 of Vol. I.

We know of no provision in the Bankruptcy law requiring the appointment of brokers by order of Court. In this respect permit us to direct the Court's attention to General Order in Bankruptcy No. 45, which provides for orders only in the case of auctioneers, accountants and appraisers.

In the present case, not only was there not presented a higher bid, notwithstanding the Court's granting five weeks in which to procure such, but there was not even a definite promise that one would or could be procured. And even up to the present day neither Trustee nor Bankrupt has been able to procure any other buyers for this property at a price in excess of the bid confirmed by the Procter & Gamble Manufacturing Co. Does this mean that this estate is to be kept open for another period or eleven or twelve years, and without doubt if it is the real estate market along with other commodities will suffer a material decrease in value.

Surely, this case must sometime come to an end and it cannot until the Trustee disposes of the property of the estate.

We respectfully call the Court's attention to the foregoing matters and respectfully pray that the order of the lower Court be reversed.

Respectfully submitted,

JOSEPH SATTLER,

Attorney for Appellee.